

**REMARKS**

Claims 1, 3, 5, 6 and 27-28 stand rejected under 35 U.S.C. § 102(e) as being anticipated by Magee et al. (U.S. Patent Application Publication Number 2004/0198379, hereinafter "Magee") and claims 2, 4, 7-26 and 29-33 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Magee in view of Chen et al. (U.S. Patent Application Publication Number 2003/0157945, hereinafter "Chen"). The Examiner's thoughtful reply in the *Response to Arguments* section of the present office action is appreciated; however, respectfully disagreeing, reconsideration is requested by the applicants.

Independent claim 1 recites "monitoring, by a wireless communications network, messaging and messaging responses of a mobile station (MS), wherein the messaging and the messaging responses do not explicitly specify a presence state of the MS or a presence state change by the MS; inferring, by the wireless communications network, a change in the presence state of the MS based upon the monitoring." Independent claim 28 recites "a wireless presence proxy... adapted to monitor the messaging and the messaging responses of the MS, wherein the messaging and the messaging responses do not explicitly specify a presence state of the MS or a presence state change by the MS, adapted to infer a change in the presence state of the MS based upon the monitoring." The Examiner cites FIG. 2 boxes 110 and 112 and Magee [0014] as teaching this claim language. Magee [0014-0017] (the text describing FIG. 2 boxes 110 and 112 is included in Magee [0016-0017]) reads:

[0014] Instant messaging and presence server (IMPS) 70 is coupled to location server 60 and to presence proxy 50. Presence proxy 50, location server 60 and presence server 70 comprise the packet switched portion of the home network 100. When location server 60 detects the mobile station 10 within a particular geographic area for which presence services are available, location server 60 sends a signal which triggers presence server 70. Presence server 70 evaluates the particular subscriber 10 against the stored contact list. If the contact list and its associated database indicate notification of presence services are permissible, presence server 70 sends the information via presence proxy 50 to mobile station 10 via base station 20. Location server 60 detects particular conditions for transmitting the triggering signal to presence server 70. For example, if mobile station 10

has entered a shopping mall, school or sports stadium, for example.

[0015] Typically, the mobile station 10 determines its geographic location and updates location server 60 with its location.

[0016] Referring to FIG. 2, a flow chart of the operation of the mobile station or device 10 is shown. The process is started and block 110 is entered. The user or subscriber powers on the mobile station, block 110. Next, block 112 is entered which the mobile station determines whether it is provisioned for the presence feature. If the mobile station 10 is not equipped or provisioned with the presence feature, block 112 transfers control to block 114 which ends the process.

[0017] If the mobile device is equipped with the presence feature, block 112 transfers control to block 116 via the yes path. In block 116 the subscriber requests location notification lists from the presence server 70. Next, in block 118 the presence server 70 downloads or transmits the notification list associated with that geographic location to the mobile station 10.

In the *Response to Arguments* section of the present office action, the Examiner asserts that because the location server 60 and presence server 70 monitor the location of the mobile station it is inherent that the wireless communications network would be able to infer a change in the presence of the mobile station. However, the applicants submit that monitoring the location of the mobile station is different than monitoring **messaging and messaging responses of the MS**, as recited by the claims. Nonetheless, the claims further recite wherein the messaging and the messaging responses **do not explicitly specify** a presence state of the MS or a presence state change by the MS. Assuming one equates "location" with "presence state," as it appears the Examiner is doing, Magee [0015] appears to teach away from this portion of the claim language with the MS determining its geographic location and then updating the location server 60 with its location.

The claims further recite inferring a change in the **presence state** of the MS **based upon the monitoring** (i.e., the monitoring of messaging and messaging responses of the MS). In the *Response to Arguments* section of the present office action, the Examiner asserts that because the location server 60 and presence server 70 monitor the location of the mobile station it is **inherent** that the wireless communications network **would be able to infer** a change in the presence of the mobile station. However, the applicants submit that monitoring the location of the mobile

station, as cited in Magee, neither requires nor suggests inferring a presence state. The applicants submit that the Examiner's own language indicates that such an inference is not necessary or suggested. The Examiner says that "the wireless communications network **would be able to infer** a change in the presence of the mobile station" (emphasis added). If X in doing Y necessarily did Z, then doing Z would be inherent to doing Y. However, if X by doing Y would merely be able to do Z, is doing Z really inherent to doing Y? Why is inferring a presence state inherent to the description of monitoring the location of a mobile in the cited portion of Magee? On what basis does the Examiner make this assertion? (The applicants note that "presence state" is recited in the claims, not simply "presence" as the Examiner uses in the *Response to Arguments* section of the present office action. "Presence" is more readily equated with "location" than "presence state," thus allowing one distinguishing aspect of the claims to be obscured without being addressed directly.)

Since none of the references cited, either independently or in combination, teach all of the limitations of independent claims 1 or 28, or therefore, all the limitations of their respective dependent claims, it is asserted that neither anticipation nor a prima facie case for obviousness has been shown. No remaining grounds for rejection or objection being given, the claims in their present form are asserted to be patentable over the prior art of record and in condition for allowance. Therefore, allowance and issuance of this case is earnestly solicited.

The Examiner is invited to contact the undersigned, if such communication would advance the prosecution of the present application. Lastly, please charge any additional fees (including extension of time fees) or credit overpayment to Deposit Account No. **502117 – Motorola, Inc.**

Respectfully submitted,  
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